



(Do not write above this line.)

<b>State Bar Court of California</b> <b>Hearing Department</b> <b>San Francisco</b> <b>DISBARMENT</b>		
<p>Counsel for the State Bar</p> <p><b>Susan I. Kagan</b>                      Supervising Attorney                      180 Howard St.                      San Francisco, CA 94105                      (415) 538-2037</p> <p>Bar # 214209</p>	<p>Case Number(s):                      16-O-12535-CV;                      16-O-12976;                      17-O-05718-CV</p>	<p>For Court use only</p> <p style="text-align: center; font-size: 1.2em;"><b>PUBLIC MATTER</b></p> <p style="text-align: center; font-size: 1.5em;"><b>FILED</b></p> <p style="text-align: center; font-size: 1.2em;">APR 24 2019</p> <p style="text-align: center; font-size: 0.8em;">STATE BAR COURT CLERK'S OFFICE                      SAN FRANCISCO</p>
<p>In Pro Per Respondent</p> <p><b>Michael N. Splivalo</b>                      5132 N Palm #121                      Fresno, CA 93704                      (559) 916-0715</p> <p>Bar # 128465</p>	<p>Submitted to: <b>Settlement Judge</b></p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND                      DISPOSITION AND ORDER APPROVING; ORDER OF                      INVOLUNTARY INACTIVE ENROLLMENT</p> <p><b>DISBARMENT</b></p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter of:  <b>MICHAEL NORMAN SPLIVALO</b></p> <p>Bar # 128465</p> <p>A Member of the State Bar of California                      (Respondent)</p>		

**Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.**

**A. Parties' Acknowledgments:**

- (1) Respondent is a member of the State Bar of California, admitted **June 23, 1987**.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of **13** pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law."

- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. It is recommended that (check one option only):
- Costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment. Unless the time for payment of discipline costs is extended pursuant to subdivision (c) of section 6086.10, costs assessed against a member who is actually suspended or disbarred must be paid as a condition of reinstatement or return to active status.
  - Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs."
  - Costs are entirely waived.
- (9) ORDER OF INACTIVE ENROLLMENT:  
The parties are aware that if this stipulation is approved, the judge will issue an order of inactive enrollment under Business and Professions Code section 6007, subdivision (c)(4), and Rules of Procedure of the State Bar, rule 5.111(D)(1).

**B. Aggravating Circumstances [Standards for Attorney Sanctions for Professional Misconduct, standards 1.2(h) & 1.5]. Facts supporting aggravating circumstances are required.**

- (1)  **Prior record of discipline:**
- (a)  State Bar Court case # of prior case:
  - (b)  Date prior discipline effective:
  - (c)  Rules of Professional Conduct/ State Bar Act violations:
  - (d)  Degree of prior discipline:
  - (e)  If Respondent has two or more incidents of prior discipline, use space provided below:
- (2)  **Intentional/Bad Faith/Dishonesty:** Respondent's misconduct was dishonest, intentional, or surrounded by, or followed by bad faith.
- (3)  **Misrepresentation:** Respondent's misconduct was surrounded by, or followed by misrepresentation.
- (4)  **Concealment:** Respondent's misconduct was surrounded by, or followed by concealment.
- (5)  **Overreaching:** Respondent's misconduct was surrounded by, or followed by overreaching.

(Do not write above this line.)

---

- (6)  **Uncharged Violations:** Respondent's conduct involves uncharged violations of the Business and Professions Code or the Rules of Professional Conduct.
- (7)  **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (8)  **Harm:** Respondent's misconduct harmed significantly a client, the public, or the administration of justice. **See page 10.**
- (9)  **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of Respondent's misconduct.
- (10)  **Lack of Candor/Cooperation:** Respondent displayed a lack of candor and cooperation to victims of Respondent's misconduct, or to the State Bar during disciplinary investigations or proceedings.
- (11)  **Multiple Acts:** Respondent's current misconduct evidences multiple acts of wrongdoing. **See page 10.**
- (12)  **Pattern:** Respondent's current misconduct demonstrates a pattern of misconduct.
- (13)  **Restitution:** Respondent failed to make restitution.
- (14)  **Vulnerable Victim:** The victim(s) of Respondent's misconduct was/were highly vulnerable.
- (15)  **No aggravating circumstances** are involved.

**Additional aggravating circumstances:**

**C. Mitigating Circumstances [Standards 1.2(i) & 1.6]. Facts supporting mitigating circumstances are required.**

- (1)  **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not likely to recur.
- (2)  **No Harm:** Respondent did not harm the client, the public, or the administration of justice.
- (3)  **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of Respondent's misconduct or to the State Bar during disciplinary investigations and proceedings.
- (4)  **Remorse:** Respondent promptly took objective steps demonstrating spontaneous remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of Respondent's misconduct.
- (5)  **Restitution:** Respondent paid \$ \_\_\_\_\_ on \_\_\_\_\_ in restitution to \_\_\_\_\_ without the threat or force of disciplinary, civil or criminal proceedings.
- (6)  **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced Respondent.
- (7)  **Good Faith:** Respondent acted with a good faith belief that was honestly held and objectively reasonable.

(Do not write above this line.)

- (8)  **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct, Respondent suffered extreme emotional difficulties or physical or mental disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by Respondent, such as illegal drug or substance abuse, and the difficulties or disabilities no longer pose a risk that Respondent will commit misconduct.
- (9)  **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond Respondent's control and which were directly responsible for the misconduct.
- (10)  **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in Respondent's personal life which were other than emotional or physical in nature.
- (11)  **Good Character:** Respondent's extraordinarily good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of Respondent's misconduct.
- (12)  **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by subsequent rehabilitation.
- (13)  **No mitigating circumstances** are involved.

**Additional mitigating circumstances:**

**No Prior Discipline. See page 10.**  
**Pretrial Stipulation. See page 10.**

**D. Recommended Discipline:**

**Disbarment**

Respondent is disbarred from the practice of law in California and Respondent's name is stricken from the roll of attorneys.

**E. Additional Requirements:**

- (1) **California Rules of Court, Rule 9.20:** Respondent must comply with the requirements of California Rules of Court, rule 9.20, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order imposing discipline in this matter. Failure to do so may result in disbarment or suspension.

For purposes of compliance with rule 9.20(a), the operative date for identification of "clients being represented in pending matters" and others to be notified is the filing date of the Supreme Court order, not any later "effective" date of the order. (*Athearn v. State Bar* (1982) 32 Cal.3d 38, 45.) Further, Respondent is required to file a rule 9.20(c) affidavit even if Respondent has no clients to notify on the date the Supreme Court filed its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an attorney's failure to comply with rule 9.20 is, inter alia, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)

- (2)  **Restitution (Single Payee):** Respondent must make restitution in the amount of \$ \_\_\_\_\_, plus 10 percent interest per year from \_\_\_\_\_, to \_\_\_\_\_ (or reimburse the Client Security Fund to the extent of any payment from the Fund to such payee in accordance with Business and Professions Code section 6140.5).

(Do not write above this line.)

---

- (3)  **Restitution (Multiple Payees):** Respondent must make restitution to each of the following payees (or reimburse the Client Security Fund to the extent of any payment from the Fund to such payee in accordance with Business and Professions Code section 6140.5):

<i>Payee</i>	<i>Principal Amount</i>	<i>Interest Accrues From</i>

- (4)  **Other Requirements:** It is further recommended that Respondent be ordered to comply with the following additional requirements:

**ATTACHMENT TO**  
**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION**

IN THE MATTER OF:                      MICHAEL NORMAN SPLIVALO

CASE NUMBERS:                        16-O-12535-CV; 16-O-12976; 17-O-05718-CV

**FACTS AND CONCLUSIONS OF LAW.**

Respondent admits that the following facts are true and that he is culpable of violations of the specified statutes and/or Rules of Professional Conduct.

**Case No. 16-O-12976-CV (Complainant: Robert Palmer)**

**FACTS:**

1.     On October 7, 2010, Robert Palmer (“Robert”) hired respondent to represent him in the dissolution matter, *Palmer v. Palmer*, Fresno County Superior Court Case No. 10CEFL00600 (“dissolution matter”).
2.     On March 1, 2011, the court issued an order after hearing, ordering sale of the family residence with each party receiving \$25,000 from the proceeds of the sale directly from escrow and the remaining proceeds to be deposited into a blocked trust account held by respondent for the benefit of both parties in the dissolution matter.
3.     On August 3, 2011, the family residence sold for \$349,900. From that amount, \$10,000 was paid directly to respondent as fees and \$10,000 to counsel for Robert’s wife, Christine, as fees. In addition, \$25,000 was paid directly to Robert and \$25,000 was paid directly to Christine. After those payments and costs, the remaining proceeds totaled \$94,238.06 to be held by respondent.
4.     On August 4, 2011, First American Title Company sent respondent a check in the amount of \$94,238.06. On August 5, 2011, respondent deposited the check into his client trust account. At the time, respondent maintained a CTA at California Bank Trust, Account No. 13800xxxxx (CTA #1). At the time of the deposit, CTA #1 had a balance of \$726.06.
5.     Almost immediately after the deposit, respondent began withdrawing the money for his own use and benefit. By December 22, 2011, the balance in CTA #1 was \$72,787.71. As of that date, respondent had misappropriated \$21,450.35 of the parties’ funds.
6.     On December 22, 2011, First American Title Company sent respondent two checks in the amount of \$2,000 and \$2,564.25, respectively, representing refunds of overpayments for taxes on community property in the dissolution matter. On December 30, 2011, respondent deposited the checks into CTA #1. As of that date, respondent was required to maintain a total of \$98,802.31 in trust on behalf of the parties in the dissolution matter.

7. On June 4, 2012, respondent closed CTA #1 and withdrew the remaining funds totaling \$86,180.45. On the same date, respondent opened a new client trust account at California Bank Trust, Account No. 13804xxxxx (CTA #2) and deposited the \$86,180.45 into that account.
8. Between March 25, 2012, and October 12, 2012, the court issued orders allowing respondent to pay certain community debts and legal fees. From July 2, 2012 through August 31, 2012, the funds in CTA#2 were debited after respondent issued checks totaling \$9,899.41, pursuant to the court orders.
9. During that same time period, respondent made withdrawals from the parties' funds, for his own use and benefit. As of August 31, 2012, respondent was required to maintain \$88,902.90 in CTA#2 for the benefit of the parties (\$98,802.31 - \$9,899.41). As of August 31, 2012, the balance in CTA#2 was \$60,200.52. Respondent had misappropriated \$28,702.38.
10. Thereafter, the funds in CTA#2 were debited after respondent issued checks totaling \$46,900, pursuant to the court orders.
11. From October 2, 2012 through April 5, 2013, respondent paid no other funds from CTA#2 for the benefit of the parties.
12. On April 5, 2013, respondent drafted a proposed stipulated judgment wherein he misrepresented: "There is \$37,013.00 held in the trust account." In truth and in fact, only \$9,456.60 remained in CTA#2. Thereafter, the parties and their counsel signed the proposed stipulated judgment and on April 15, 2013, respondent filed the proposed stipulated judgment.
13. On April 15, 2013, the court issued a stipulated judgment based on the parties' stipulation. In the stipulated judgment, the court ordered payment of \$11,440 to Christine and \$14,679 to Robert, with respondent to maintain \$7,893.27 in trust to pay the remaining community debts. Of that amount, \$6,093.27 was to be paid to for specific community debts. On April 26, 2013, the court issued a final judgment of dissolution.
14. Thereafter, respondent deposited funds belonging to other clients into CTA#2. Some of those funds were used to pay community debts totaling \$15,411.50.
15. As of December 3, 2013, respondent was required to maintain \$22,016.40 (\$37,002.90 - \$15,411.50) in CTA#2 for the benefit of the parties. As of that date, the balance in CTA#2 was \$21.12; respondent had misappropriated \$21,591.40.
16. Thereafter, respondent issued no further payments from CTA#2 on behalf of the parties. As of January 22, 2014, respondent had not paid Robert any portion of the \$14,679 ordered by the court and had not maintained that amount in CTA#2. On January 22, 2014, Robert sent an email to respondent asking about the status of his case. On the same date, respondent's daughter, Lisa, sent an email to Robert claiming that the funds could not be distributed until after the sale of the boat was finalized. At no time did respondent or anyone from his office advise Robert that respondent had already distributed funds to Christine and that Robert's funds did not remain in trust.
17. As of February 25, 2014, the balance in CTA#2 was \$152.10. On February 26, 2014, respondent sent a billing invoice to Robert. In the invoice, respondent noted that Robert owed a balance of \$15,099.29 as of February 10, 2014. He then misrepresented that \$11,440 of his fees were paid on "2/25/14" from "funds held per Contract" at a time when only \$152.10 remained in CTA#2.

18. On October 5, 2015, the parties sold the boat for \$1,500, with \$750 going to Robert and \$750 going to Christine. In January 2016, Robert requested an accounting of all of the payments made from the funds and copies of respondent's billing invoices. Thereafter, respondent provided an accounting of funds paid on behalf of the parties and copies of all of his billing invoices. Robert then disputed respondent's accounting.

19. On March 28, 2016, Robert filed a complaint against respondent with the State Bar. On April 25, 2016, respondent was notified about the complaint. On March 15, 2017, Robert sent a letter to respondent, requesting \$6,700 from the funds respondent was required to hold in CTA#2, based on respondent's calculation error in the accounting. On April 27, 2017, respondent sent CTA#2 check number 2159 to Robert in the amount of \$6,700.

#### CONCLUSIONS OF LAW:

20. By failing to maintain \$88,902.90 on behalf of the parties in CTA#2, respondent failed to maintain the balance of funds received for the benefit of a client and deposited in a bank account labeled "Trust Account," "Client's Funds Account" or words of similar import in willful violation of rule 4-100(A) of the Rules of Professional Conduct.

21. By misappropriating \$28,702.38 from the funds held in CTA#2 on behalf of the parties, respondent committed an act involving moral turpitude, dishonesty or corruption in willful violation of section 6106 of the Business and Professions Code.

22. By making a misrepresentation in the proposed stipulated judgment that respondent continued to maintain \$37,013.00 in his trust account on behalf of the parties when respondent knew the statement to be false, respondent committed an act involving moral turpitude, dishonesty or corruption, in willful violation of section 6106 of the Business and Professions Code.

23. By making misrepresentations in his billing invoice that respondent maintained \$11,440 on behalf of Robert Palmer in trust and that respondent paid himself fees from those funds on February 25, 2014, when respondent knew the statements to be false, respondent committed an act involving moral turpitude, dishonesty or corruption, in willful violation of section 6106 of the Business and Professions Code.

#### Case No. 16-O-12976 (Complainant Jennifer Wilson)

#### FACTS:

24. On November 20, 2015, Jennifer Wilson ("Wilson") hired respondent to represent her in the dissolution matter, *Wilson v. Wilson*, Madera County Superior Court Case No. MFL012402 ("dissolution matter").

25. Prior to December 9, 2015, respondent directed Wilson to prepare a declaration entitled "Declaration of Jennifer Wilson Re: Child Custody and Visitation" ("declaration"). Wilson prepared a draft declaration and sent it to respondent for review. After several revisions by the parties, respondent finalized the declaration.



26. On December 9, 2015, at respondent's direction, an employee in respondent's office signed the declaration as "Jennifer Wilson" under the statement: "I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct." At respondent's direction, an employee in respondent's office submitted the declaration for filing with the court. The declaration was accepted for filing on December 15, 2015.

27. Respondent did not comply with the provisions of Code of Civil Procedure, section 446, for signing a document on behalf of a client.

28. Respondent did not notify the court, or the other party in the dissolution matter, that someone other than the client signed the declaration.

#### CONCLUSIONS OF LAW:

29. By directing an employee to sign and file a declaration which misrepresented that the client signed the declaration under penalty of perjury, respondent sought to mislead the judge or judicial officer by an artifice or false statement of fact or law in willful violation of section 6068(d) of the Business and Professions Code.

#### Case No. 17-O-05718-CV (Complainant: Lisa Marquez)

#### FACTS:

30. Prior to March 23, 2015, respondent was hired by Eduardo Marquez ("Marquez") to represent Marquez in a dissolution of marriage matter, and at all relevant times, was counsel of record for Marquez in *Marquez v. Marquez*, Fresno County Superior Court Case No. 13CEFL01867.

31. On March 23, 2015, a hearing was held where the court ordered the sale of the parties' real property with the proceeds to be held in respondent's client trust account. The court also ordered for counsel for each party to be paid \$5,000 as attorney's fees from the proceeds. The written order was filed on May 1, 2015.

32. On March 27, 2015, Chicago Title Company sent respondent a check in the amount of \$132,696.51. On March 30, 2015, respondent deposited the check into his client trust account at California Bank Trust, Account No. 13804xxxxx (CTA). At the time of the deposit, respondent's CTA had a balance of \$485.03. After the deposit, the balance in respondent's CTA was \$133,181.54.

33. Thereafter, respondent paid himself and opposing counsel \$5,000 each as fees pursuant to the court order. After the \$10,000 total payment, respondent was required to maintain \$122,696.51 in community property funds in his CTA on behalf of the parties.

34. Almost immediately after the deposit, respondent began withdrawing the money for his own use and benefit, including paying himself fees without a court order. By November 30, 2016, the balance in respondent's CTA was \$51,632.82. As of that date, respondent had misappropriated \$71,063.69 of the parties' community property funds for his own use and benefit.

35. On January 20, 2017, the court issued a final ruling after trial. In the ruling, the court ordered the parties to split the proceeds from the sale of real property equally, with some other payments to the

opposing party. The parties were to pay their own fees and costs. The court issued a final judgment on August 10, 2017.

36. On January 20, 2017, the court issued a final ruling after trial. In the ruling, the court ordered the parties to split the proceeds from the sale of real property equally, with some other payments to the opposing party. The parties were to pay their own fees and costs. The court issued a final judgment on August 10, 2017. Thereafter, respondent paid Marquez the entire amount ordered by the Court.

#### CONCLUSIONS OF LAW:

37. By failing to maintain a balance of \$123,181.54 on behalf of the parties in his CTA, respondent failed to maintain the balance of funds received for the benefit of a client and deposited in a bank account labeled "Trust Account," "Client's Funds Account" or words of similar import in willful violation of rule 4-100(A) of the Rules of Professional Conduct.

38. By misappropriating \$71,063.69 from the funds held in his CTA on behalf of the parties, respondent committed an act involving moral turpitude, dishonesty or corruption in willful violation of section 6106 of the Business and Professions Code.

39. By failing to obey the court's order of May 1, 2015, requiring respondent to maintain community property funds in his client trust account, respondent disobeyed or violated an order of the court requiring respondent to do or forbear an act connected with or in the course of respondent's profession which respondent ought in good faith to do or forbear, in willful violation of section 6103 of the Business and Professions Code.

#### AGGRAVATING CIRCUMSTANCES.

**Multiple Acts of Wrongdoing (Std. 1.5(b)):** Respondent committed eight acts of misconduct in three separate matters, demonstrating multiple acts of wrongdoing.

**Significant Harm to Client, Public or Administration of Justice (Std. 1.5(j)):** Respondent's misappropriation of Robert Palmer's funds deprived his client of the use of those funds, causing significant harm to the client.

#### MITIGATING CIRCUMSTANCES.

**No Prior Discipline:** Although respondent's misconduct is serious, he is entitled to mitigation for having practice law for approximately 26 years without discipline. (*In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 49.)

**Pretrial Stipulation:** By entering into this stipulation, respondent has acknowledged misconduct and is entitled to mitigation for recognition of wrongdoing and saving the State Bar significant resources and time. (*Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [where mitigative credit was given for entering into a stipulation as to facts and culpability]; *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511, 521 [where the attorney's stipulation to facts and culpability was held to be a mitigating circumstance].)

## AUTHORITIES SUPPORTING DISCIPLINE.

The Standards for Attorney Sanctions for Professional Misconduct “set forth a means for determining the appropriate disciplinary sanction in a particular case and to ensure consistency across cases dealing with similar misconduct and surrounding circumstances.” (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.1. All further references to standards are to this source). The Standards help fulfill the primary purposes of discipline, which include: protection of the public, the courts and the legal profession; maintenance of high professional standards; and preservation of public confidence in the legal profession. (*In re Morse* (1995) 11 Cal.4th 184, 205.) Although not binding, the standards are entitled to “great weight” and should be followed “whenever possible” in determining level of discipline. (*In re Silvertown* (2005) 36 Cal.4th 81, 92, quoting *In re Brown* (1995) 12 Cal.4th 205, 220 and *In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) Adherence to the standards in the great majority of cases serves the valuable purpose of eliminating disparity and assuring consistency, that is, the imposition of similar attorney discipline for instances of similar attorney misconduct. (*In re Naney* (1990) 51 Cal.3d 186, 190.) If a recommendation is at the high end or low end of a Standard, an explanation must be given as to how the recommendation was reached. (Std. 1.1.) Any discipline recommendation that deviates from the Standards must include clear reasons for the departure. (Std. 1.1; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

In determining whether to impose a sanction greater or less than that specified in a given Standard, in addition to the factors set forth in the specific Standard, consideration is to be given to the primary purposes of discipline; the balancing of all aggravating and mitigating circumstances; the type of misconduct at issue; whether the client, public, legal system or profession was harmed; and the respondent’s willingness and ability to conform to ethical responsibilities in the future. (Stds. 1.7(b) and (c).)

Here, respondent committed eight acts of misconduct, including misappropriating community funds in two separate matters, making misrepresentations to a court and his client and violating a court order. Standard 1.7(a) requires that where a respondent “commits two or more acts of misconduct and the Standards specify different sanctions for each act, the most severe sanction must be imposed.”

The most severe sanction applicable to respondent’s misconduct is found in standard 2.1(a), which applies to respondent’s intentional misappropriation and provides: “Disbarment is appropriate for intentional or dishonest misappropriation of entrusted funds or property, unless the amount misappropriated is insignificantly small or the most compelling mitigating circumstances clearly predominate, in which case actual suspension of one year is appropriate.” Here, the amount of the misappropriation is not “insignificantly small,” and there is no evidence that the most compelling circumstances clearly predominate. In aggravation, respondent committed multiple acts of misconduct and caused harm to one client by depriving that client of the use of his funds for approximately three years. Respondent is entitled to mitigation for no prior record of discipline in 26 years of practice and for entering into a stipulation to the facts and conclusions of law.

Based on the serious nature of the misconduct, disbarment is warranted under the standards.

Case law also supports disbarment for intentional misappropriations, even when the attorney has no prior record of discipline. (See *Kaplan v. State Bar* (1991) 52 Cal.3d 1067) [disbarment for misappropriating approximately \$29,000 from attorney’s law firm and making misrepresentations about the misappropriation; no prior record of discipline]; *Chang v. State Bar* (1989) 49 Cal.3d 114

[disbarment for misappropriation of over \$7,000; no prior record of discipline]; *Kelly v. State Bar* (1988) 45 Cal.3d 649 [disbarment for misappropriation of approximately \$20,000; no prior record of discipline]; *In re Abbott* (1977) 19 Cal.3d 249 [disbarment for misappropriation of over \$29,000; no prior record of discipline]; *In the Matter of Spaith* (Review Dept. 1996) 3 Cal.State Bar Ct.Rptr. 511 [disbarment for misappropriation of approximately \$40,000 in one client matter; no prior record of discipline]; *In the Matter of Keuker* (Review Dept. 1991) 1 Cal.State Bar Ct.Rptr. 583 [disbarment for misappropriation of approximately \$66,000 in one client matter; no prior record of discipline].)

For the reasons set forth above, disbarment will protect the public and serve the purposes of attorney discipline.

**DISMISSALS.**

The parties respectfully request the Court to dismiss the following alleged violations in the interest of justice:

<u>Case No.</u>	<u>Count</u>	<u>Alleged Violation</u>
16-O-12535-CV	Count Four	Business and Professions Code section 6068(d)
16-O-12976	Count Five	Business and Professions Code section 6106

**COSTS OF DISCIPLINARY PROCEEDINGS.**

Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of March 28, 2019, the discipline costs in this matter are \$8,009. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.



(Do not write above this line.)

In the Matter of: MICHAEL NORMAN SPLIVALO	Case Number(s): 16-O-12535; 16-O-12976; 17-O-05718
--	---

### DISBARMENT ORDER

Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- All Hearing dates are vacated.

1. On page 10 of the stipulation in the section entitled No Prior Discipline, "he is entitled to mitigation for having practice law for approximately 26 years" is deleted, and in its place is inserted "he is entitled to mitigation for having practiced law for approximately 26 years."

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See Rules Proc. of State Bar, rule 5.58(E) & (F).) **The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after the filed date of the Supreme Court order. (See Cal. Rules of Court, rule 9.18(a).)**

Respondent Michael Norman Splivalo is ordered transferred to involuntary inactive status pursuant to Business and Professions Code section 6007, subdivision (c)(4). Respondent's inactive enrollment will be effective three (3) calendar days after this order is served by mail and will terminate upon the effective date of the Supreme Court's order imposing discipline herein, or as provided for by rule 5.111(D)(2) of the Rules of Procedure of the State Bar of California, or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

Date

April 24, 2019

  
PAT E. McELROY, JUDGE PRO TEM  
Judge of the State Bar Court

**CERTIFICATE OF SERVICE**

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Court Specialist of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, on April 24, 2019, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING; ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

in a sealed envelope for collection and mailing on that date as follows:

- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

MICHAEL N. SPLIVALO  
MICHAEL N SPLIVALO, ATTORNEY  
5132 N PALM #121  
FRESNO, CA 93704

- by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

SUSAN I. KAGAN, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on April 24, 2019.



---

Bernadette Molina  
Court Specialist  
State Bar Court